IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 388 of 2006
(Old No. 5875 of 1987)

Pritam Singh S/o Sri Dassa Singh
C/o Gurdwara Sirhind Mandi,
Nai Abadi, Sirhind, Punjab.

..... Applicant

Versus

1. Smt. Rajindar kaur
   D/o Sri Kartar Singh
   R/o Village Chachroli,
   District Ambala.
2. The State.

..... Respondents

Mr. Nagesh Aggarwal, Advocate for the applicant.
Mr. P.S. Saun, Brief Holder for the respondent State.

Hon. Prafulla C. Pant, J.

By means of this petition, moved under Section 482 of the Code of Criminal Procedure, 1973 (for brevity hereinafter Cr. P.C.), the petitioner has challenged the order dated 22.09.1986, passed by learned Additional Sessions Judge, Dehradun, in criminal revision No. 171 of 1985, whereby the same is dismissed upholding the order dated 23.04.1985, passed by Munsif / Judicial Magistrate II, Dehradun, in criminal complaint case No. 2438 of 1985; Rajindar Kaur Vs. Pritam Singh, relating to offences punishable under Section 494, 120-B of I.P.C., registered with police station Cantt. Dehradun.

2) Heard learned counsel for the parties and perused the record.

3) Brief facts of the case are that the petitioner got married to respondent Rajindar Kaur and thereafter both were under some litigation. It appears, that respondent Rajindar Kaur filed a compliant against the petitioner, alleging that the petitioner got re-married to another woman during her lifetime, without dissolution of marriage.

4) After hearing the evidence under Section 200 and 202 of Cr. P.C., the trial court appears to have summoned the petitioner for trial, in respect of the aforementioned offences. Aggrieved by said order, petitioner filed revision before the learned Sessions Judge, which was disposed of by Additional Sessions Judge on 22.09.1986, upholding order of the Magistrate. Perusal of the impugned order shows that the summoning of the accused (petitioner) was challenged before the revisional court on the ground that earlier complaint in respect of same offence, lodged by Rajindar Kaur (respondent) was dismissed at the stage of 245 of Cr.P.C., and the petitioner (accused) was discharged from said offence. Taking shelter of Section 300 of Cr.P.C., the petitioner challenged the summoning order before the revisional court, that he cannot be tried twice, for the same offence. The revisional court took the view that there is difference between the acquittal and the discharge and as such, technically, the trial against the accused (petitioner) had not completed in the earlier complaint.

5) Learned counsel for the petitioner relied on the principle of law laid down in ***Pramatha Nath Talukdar and another Vs. Saroj Ranjan Sarkar, reported in A.I.R. 1962 Supreme Court 876,*** *in which per majority the Apex court has held that the complaint once dismissed should not ordinarily by*

entertained again, (though, technically, there is no bar to entertain the fresh complaint). Apart from this, most significant fact, in this case, is that with supplementary affidavit to this petition, the petitioner has filed copy of decree of divorce, passed by the Punjab and Haryana High Court on 14th of December, 1984, in F.A.F.O. No. 69-M of 1984, whereby the petition of divorce of Pritam Singh (petitioner) was allowed, dissolving the marriage with respondent Rajindar Kaur. It is further argued that the petitioner has not married to any other woman prior to the dissolution of marriage. The respondent No. 1 Rajindar Kaur, even after being served personally has not responded to the notices issued, by this Court.

5) In the circumstances, this Court is inclined to grant the relief sought by the petitioner through this petition. Accordingly, the petitioner under Section 482 of Cr. P.C. is allowed. The proceedings of criminal complaint case No. 2438 of 1985; Rajindar Kaur Vs. Pritam Singh, relating to offences punishable under Section 494, 120-B of I.P.C., pending before the Munsif / Judicial Magistrate II / Addl. Chief Judicial Magistrate, Dehradun, are hereby quashed. (All the pending applications in this Petition also stand disposed of).

(Prafulla C. Pant, J.)

Dt. October 31, 2006.
H. Negi